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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,815	06/26/2003	Francois Cottard	239098US0	2794
22850	7590	06/21/2006		
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
			EXAMINER ELHILO, EISA B	
			ART UNIT 1751	PAPER NUMBER

DATE MAILED: 06/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/603,815	<b>Applicant(s)</b> COTTARD ET AL.	
	<b>Examiner</b> Eisa B. Elhilo	<b>Art Unit</b> 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

- 1        This action is responsive to the amendment filed on April 19, 2006.
- 2        The rejection of claims 1-23 and 25-33 under 35 U.S.C. 103(a) as being unpatentable over Casperson et al. (US' 146) in view of Duffer et al. (US' 979 A1), is maintained for the reasons set forth in the previous office action that mailed on 12/21/2005.
- 3        The rejection of claims 1,3-4, 11, 13-16, 19-22 and 24-26 under 35 U.S.C. 103(a) as being unpatentable over Dias et al. (US' 355) in view of Duffer et al. (US' 979 A1), is maintained for the reasons set forth in the previous office action that mailed on 12/21/2005.

### ***Response to Applicant's Arguments***

- 4        Applicant's arguments filed 4/19/2006 have been fully considered but they are not persuasive.

With respect to the rejection of claims 1-23 and 25-33 under 35 U.S.C. 103(a) as being unpatentable over Casperson et al. (US' 146) in view of Duffer et al. (US' 979 A1), Applicant argues that Casperson does not teach or suggest that alkanolamines and organic or inorganic alkalizing agents can be used together. Applicant also argues that nothing in Casperson or Duffer would motivate one skilled in the art to combine the required alkalizing agents in the specified amount/ratios with the expectation that a composition have suitable dyeing properties.

The examiner respectfully disagrees with the above arguments because a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including non-preferred embodiments. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed.Cir.), *cert. denied*, 493 U.S. 975 (1989). In this case Casperson et al. (US' 146) as a primary reference clearly teaches and suggests the use of a mixture of alkaline agents

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such as alkyamines (ethylamine and ethanolamine) together with other alkaline agents such as sodium silicates in a hair dyeing composition for adjusting the pH of the composition (see col. 5, lines 12-29). Duffer et al. (US' 979) as a secondary reference in analogous art of hair dyeing composition, teaches the equivalence between sodium silicate and sodium metasilicate as alkalizing agents in the dyeing composition that both used for adjusting the pH of the composition (see page 3, paragraph, 0039). Therefore, there is a clear suggestion and sufficient motivation to one having ordinary skill in the art to be motivated to replace the silicate component in the composition of Casperson et al. with the meta-silicate component as taught by Duffer et al. to arrive at the claimed invention and would expect such a composition to have similar properties to those claimed in the absent of contrary.

With respect to the rejection of claims 1,3-4,13-16, 19-22 and 24-26 under 35 U.S.C. 103(a) as being unpatentable over Dias et al. (US' 355) in view of Duffer et al. (US' 979 A1), Applicant argues that Dias neither teaches, suggests nor recognizes any benefits associated with adding magnesium silicate to his compositions nor does he recognize any benefits associated with combining such a silicate with an alkanolamine to yield the claimed alkalizing agent.

The Examiner respectfully disagrees with the above argument for the same reasons mentioned above. Further, the use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain. "*In re Heck*, 699 F.2d 1331, 1332-33 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting *In re Iemelson*, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)).

With respect to the applicant's argument based on the Examples in the specification at pages 13-15, the examiner would like to point out that Examples 1-3, in the specification merely exemplified the claimed invention.

Further, applicants have not shown on record the criticality of the claimed composition over the composition of the closest prior art of record.

5      **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Eisa Elhilo  
Primary Examiner  
Art Unit 1751

June 12, 2006